

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

ROBERTO CLAROS et al.

Plaintiffs,

v.

SWEET HOME IMPROVEMENTS, LLC
et al.

Defendants

Civ. No: 1:16-cv-344-AJT-MSN

Motion to Strike Affirmative Defense of Fraud

Under Civil Rule 12, a court may strike from any pleading “an insufficient defense.” Fed. R. Civ. P. 12(f)(2). Here, Defendants’ Answer asserts that Plaintiffs’ claims for unpaid wages are barred by “fraud in the contract.” (ECF No. 10). Under Civil Rule 9, however, a party alleging fraud must state the circumstances constituting fraud “with particularity.” Fed. R. Civ. P. 9(b). Because Defendants have not pled their fraud defense with sufficient particularity, the Court should strike it from the Answer.

Argument

Under Rule 9(b), a party alleging fraud “must state with particularity the circumstances constituting fraud[.]” Fed. R. Civ. P. 9(b). This includes cases where a defendant pleads fraud as an affirmative defense. *See Old Dominion Univ. Research Found. v. Aqua Terra Int’l, LLC*, No.

2:14-cv-305, 2014 WL 5790944, at *4 (E.D. Va. Nov. 5, 2014). If the defendant fails to satisfy the standard, the court may strike the fraud defense. *See id.* To satisfy the standard, the Fourth Circuit has held that fraud allegations must describe “the time, place, and contents of the false representations, as well as the identity of the person making the misrepresentation and what he obtained thereby.” *Harrison v. Westinghouse Savannah River Co.*, 176 F.3d 776, 784 (4th Cir. 1999), quoting 5 Wright & Miller, *Federal Practice and Procedure: Civil* § 1297, at 590 (2d ed. 1990). Or as the Seventh Circuit has put it, “particularity” normally requires the defendant to describe “the who, what, when, where, and how of the fraud.” *Camasta v. Jos. A. Bank Clothiers, Inc.*, 761 F.3d 732, 737 (7th Cir. 2014) (citations omitted).

Defendants’ pleading falls well short of this standard. Under Virginia law, a claim of fraud essentially means that someone “has represented as true what is really false, in such a way as to induce a reasonable person to believe it, with the intent that the person will act upon this representation.” *Evaluation Research Corp. v. Alequin*, 439 S.E.2d 387, 390 (Va. 1994). But nowhere in the Answer do Defendants state *who* made a false representation, *what* the false representation was, *when* the false representation might have been made, or *how* the false representation came to be made. They do not allege Plaintiffs’ intent in making any representation. They do not allege Defendants’ reliance on any false representation. And they do not allege that any Plaintiff benefitted from a false representation. In other words, Defendants have not pled their defense with “particularity.”

Conclusion

Unlike most affirmative defenses, allegations of fraud are “special matters” and must be supported by something beyond mere notice pleading. Because Defendants have not identified

any of the circumstances surrounding the supposed fraud, Plaintiffs respectfully request that the Court strike this affirmative defense from their Answer.

Respectfully submitted,

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Date: May 17, 2016

CERTIFICATE OF SERVICE

I certify that I uploaded the foregoing Motion to Strike Affirmative Defense of Fraud to the Court's CM/ECF system today, May 17, 2016, causing a Notice of Electronic Filing to be sent to Defendants' counsel:

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